

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

KRISTALL CLASSICS, INC.,

Petitioner,

vs.

THE DIAMONDS OF RUSSIA, LTD.,

Registrant.

Cancellation No. 92/044,751

76275014

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury the within MOTION FOR RESUMPTION OF CANCELLATION PROCEEDING AND THE ISSUANCE OF JUDGMENT FOR PETITIONER was forwarded to BOX NO FEE - TTAB, Commissioner of Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, by depositing same with the United States Postal Service as first class mail, postage prepaid, this 2nd day of April, 2007.


SHERYL R. CONAWAY

**MOTION FOR RESUMPTION OF CANCELLATION PROCEEDING
AND THE ISSUANCE OF JUDGMENT FOR PETITIONER**

BOX NO FEE - TTAB
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

Pursuant to TBMP §510.02(b), Petitioner hereby moves the Board to: (1) resume .
action in the above proceeding based upon the issuance of a final order on the merits by the



United States District Court for the Central District of California that is directly related to the issue before the Board; and (2) issue judgment in this proceeding for the Petitioner.

I

STATEMENT OF FACTS

1. This Cancellation No. 92/044,751 (hereinafter referred to as the "Proceeding") is addressed solely to Petitioner's request to cancel Certificate of Registration No.

2,728,636 for the mark CLEARLY SUPERIOR KRISTALL THE DIAMONDS OF RUSSIA.

2. On January 26, 2007, Petitioner filed a civil action against the Registrant, The Diamonds of Russia, Ltd. The Complaint in the civil action, in part, sought an Order that Registrant was required to cancel Certificate of Registration No. 2,728,636 (hereinafter referred to as the "Civil Action").

3. On February 8, 2007, Petitioner filed a Motion to Suspend the Proceeding pending a final determination of the Civil Action. On March 29, 2007 the Board issued an Order suspending the Proceeding.

4. On March 28, 2007, the Court entered a Final Judgment Upon Consent in the Civil Action, a copy thereof being attached hereto as Exhibit A. Pursuant to the Order, Registrant was required to cause to be filed with the United States Patent and Trademark Office a Surrender of the Certificate of Registration No. 2,728,636 for Cancellation.

5. On March 23, 2007, in accordance with the Court's Order, the Registrant executed a Surrender of Registration Certificate No. 2,728,636 for Cancellation. The Surrender of Certificate of Registration No. 2,728,636 for cancellation was filed with the United States Patent and Trademark Office on March 28, 2007.

II

JUDGMENT SHOULD BE AWARDED TO PETITIONER

In the present case, the Proceeding was suspended pending the outcome of the Civil Action instituted by the Petitioner. It is recognized by the Board that, as a result of a final judgment in a civil court action, the interested party is expected to request that judgment be entered in its behalf in the Board proceeding [TBMP §510.02(b)]. The issues raised in the Civil Action will be considered as having been finally determined when a decision on the merits of the case ends the litigation on the merits. Id. In the Civil Action, the Final Judgment Upon Consent was agreed to by the Registrant. A Final Judgment Upon Consent is a Judgment on the merits to the extent it is agreed to by the parties. Sansom Comm. v. Lynn, 735 F.2d 1535, 1538 (3rd Cir., 1984). As exemplified by Exhibit A, the Final Judgment Upon Consent was stipulated to by the parties and orders the Registrant to cause to be filed with the United States Patent and Trademark Office a Surrender for Cancellation of Certificate of Registration No. 2,728,636. In compliance with the Order, the Surrender of Cancellation executed by the Registrant was filed with the United States Patent and Trademark Office on March 28, 2007. It is submitted that, based upon the Final Judgment Upon Consent issued in the Civil Action and the Registrant's agreement to voluntarily surrender for cancellation Certificate for Registration No. 2,728,636, judgment should be ordered for Petitioner.

III

CONCLUSION

Based on the foregoing, it is submitted that all issues raised by Cancellation Proceeding No. 92/044,751 have been decided by the United States District Court for the Central District of California in the Civil Action. Since Registrant has filed a Surrender of Registration for Certificate of Registration No. 2,728,636, it is submitted that Petitioner's Motion should be granted and Judgment entered on behalf of Petitioner.

Respectfully submitted,

ISAACMAN, KAUFMAN & PAINTER, P.C.

By:



Michael A. Painter

MAP:src
April 2, 2007
8484 Wilshire Boulevard, Suite 850
Beverly Hills, California 90211
(323) 782-7700

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2 ISAACMAN, KAUFMAN & PAINTER
3 8484 Wilshire Boulevard, Suite 850
4 Beverly Hills, California 90211
5 (323) 782-7700 - Telephone
6 (323) 782-7744 - Facsimile
7 painter@ikplaw.com

8 Attorneys for Plaintiff,
9 KRISTALL, INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 KRISTALL, INC., a Nevada cor-
14 poration,

15 Plaintiff,

16 vs.

17 THE DIAMONDS OF RUSSIA,
18 LTD., a Delaware corporation,
19 DOES I - X, Inclusive

20 Defendant.

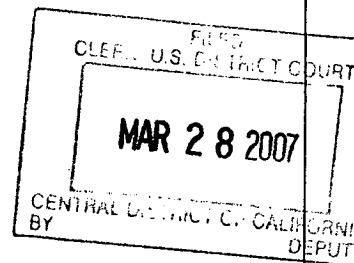
21 CASE NO.
22 CV07-647-JFW(RCx)

23 FINAL JUDGMENT UPON
24 CONSENT

25 WHEREAS, plaintiff, KRISTALL, INC. (hereinafter referred to as
26 "Kristall"), instituted this action against defendant, THE DIAMONDS OF
27 RUSSIA, LTD., a Delaware corporation (hereinafter referred to as "DOR") by
28 filing a Complaint seeking an Order of the Court cancelling Certificate of
Registration No. 2,728,636 for the trademark CLEARLY SUPERIOR
KRISTALL THE DIAMONDS OF RUSSIA and Certificate of Registration No.
2,920,296 for the trademark KRISTALL THE DIAMONDS OF RUSSIA and
alleges acts of interference with existing business relations;

WHEREAS, Kristall and DOR have reached an agreement settling
this dispute and have stipulated to the entry of this Judgment. Accordingly,

Exhibit "A" - Page 1



1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

2 **THAT:**

3 1. This Court shall retain jurisdiction over the subject matter
4 and DOR.

5 2. DOR shall cause to be filed with the United States Patent and
6 Trademark Office a Surrender of Registration for Cancellation pursuant to 37
7 C.F.R. §2.172, a copy thereof being attached hereto as Exhibit 1.

8 3. DOR shall cause to be filed with the United States Patent and
9 Trademark Office a Surrender of Registration for Cancellation pursuant to 37
10 C.F.R. §2.172, a copy thereof being attached hereto as Exhibit 2.

11 4. DOR, and its agents, employees, affiliates, successors and all
12 parties in concert or participation with them, or any of them, shall not commu-
13 nicate orally or in writing to any known customers or suppliers of Kristall false
14 representations regarding Kristall's involvement of litigation and/or that Kristall
15 has been or will be restrained with respect to the identification that its goods
16 comprise in whole or in part diamonds that are mined in or processed in
17 Russia.

18 5. Each party shall bear its own costs.

19
20 Dated: 3/28/02

JOHN F. WALTER

UNITED STATES DISTRICT JUDGE

The undersigned consent to the entry hereof without further notice.

KRISTALL, INC.


By:


Chad Hagggar
President

Dated: March 26, 2007

ISAACMAN, KAUFMAN & PAINTER

By:


Michael A. Painter
Attorneys for Plaintiff

Dated: March 28, 2007

THE DIAMONDS OF RUSSIA. LTD.

By:


Leon Fingergut
President

Dated: 03-23-07

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I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 8484 Wilshire Boulevard, Suite 850, Beverly Hills, California 90211.

Mr. Leon Fingergut
The Diamonds of Russia, Ltd.
2096 Ridge Point Drive
Los Angeles, California 90049

I am readily familiar with the practice of Isaacman, Kaufman & Painter, A Professional Corporation, for collection and processing of correspondence for mailing with the United States Postal Service, that the document would be deposited with U.S. Postal Service that same day in the ordinary course of business and on the above date and at my business address I placed for collection and mailing said envelope on that date following ordinary business practices of Isaacman, Kaufman & Painter, A Professional Corporation.

I caused the delivery of such envelope by hand at the offices of the addressee.

By transmitting via facsimile the documents listed above to the fax number set forth above on this date. This transmission was reported as complete without error by a transmission report issued by the facsimile machine upon which the said transmission was made immediately following the transmission.

I caused such document to be transmitted by electronic mail.

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I declare under the penalty of perjury under the laws of the State of California that the above is true and correct and that I am employed in the office of a member of the bar of the above Court at whose direction the service was made.

Executed this 28th day of March, 2007 at Beverly Hills, California.



SHERYL R. CONAWAY

EXHIBIT 1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK REGISTRATION - PRINCIPAL REGISTER

In re Registration of: :
THE DIAMONDS OF RUSSIA LTD. : Int'l. Class 14
Registration No. 2,728,636 :
For: CLEARLY SUPERIOR KRISTALL :
THE DIAMONDS OF RUSSIA :

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury that the within
SURRENDER OF REGISTRATION FOR CANCELLATION was
forwarded to BOX NO FEE, Commissioner for Trademarks, P.O. Box
1451, Alexandria, Virginia 22313-1451, via first class mail, postage
prepaid, this 28th day of March, 2007.


SHERYL R. CONAWAY

SURRENDER OF REGISTRATION FOR CANCELLATION

BOX NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

Sir:

THE DIAMONDS OF RUSSIA, LTD., a Delaware corporation, having its
principal place of business at 848 North Rainbow Boulevard, Suite 1052, Las Vegas, Nevada
89107 hereby surrenders this registration for cancellation pursuant to 37 C.F.R. §2.172.

The original Certificate of Registration cannot, despite diligent search, be found and is therefore believed to be lost or to have been destroyed.

Respectfully submitted,

THE DIAMONDS OF RUSSIA, LTD.

Dated: 05-23-07

By:



LEON FINGERGUT
President

EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TRADEMARK REGISTRATION - PRINCIPAL REGISTER

In re Registration of: :
THE DIAMONDS OF RUSSIA LTD. : Int'l. Class 14
Registration No. 2,920,296 :
For: KRISTALL THE DIAMONDS OF :
RUSSIA :

CERTIFICATE OF MAILING

The undersigned declares under the penalty of perjury that the within
SURRENDER OF REGISTRATION FOR CANCELLATION was
forwarded to BOX NO FEE, Commissioner for Trademarks, P.O. Box
1451, Alexandria, Virginia 22313-1451, via first class mail, postage
prepaid, this 28th day of March, 2007.


SHERYL R. CONAWAY

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Respectfully submitted,

THE DIAMONDS OF RUSSIA, LTD.

Dated: March 23, 2007

By:


LEON FINGERGUT
President

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the within **MOTION FOR RESUMPTION OF CANCELLATION PROCEEDING AND THE ISSUANCE OF JUDGMENT FOR PETITIONER** was forwarded to Registrant, The Diamonds of Russia, Ltd., 848 North Rainbow Boulevard, Suite 1052, Las Vegas, Nevada 89107, via first class mail, postage prepaid, this 2nd day of April, 2007.


SHERYL R. CONAWAY